

STATE OF MICHIGAN
COURT OF APPEALS

DEPARTMENT OF TREASURY,

Plaintiff-Appellee,

v

ESCANABA FLYING SERVICES,

Defendant-Appellant.

UNPUBLISHED
November 6, 2001

No. 224242
Ingham Circuit Court
LC No. 98-088734-CZ

Before: Doctoroff, P.J., and Wilder and Schmucker*, JJ.

PER CURIAM.

Defendant appeals as of right from an order granting summary disposition in favor of plaintiff under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This is an action to collect unpaid use tax assessments on four aircraft owned by defendant. Defendant, which never appealed the assessments, asserted that they were invalid because the aircraft were in other states at all relevant times and therefore were not subject to Michigan's use tax. The trial court granted summary disposition for plaintiff, ruling that MCL 205.22 precluded a collateral challenge to the assessments.

MCL 205.22 provides in relevant part:

(4) The assessment, decision, or order of the department [of treasury], if not appealed in accordance with this section, is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.

(5) An assessment is final, conclusive, and not subject to further challenge after 90 days after the issuance of the assessment, decision, or order of the department, and a person is not entitled to a refund of any tax, interest, or penalty paid pursuant to an assessment unless the aggrieved person has appealed the assessment in the manner provided by this section.

On appeal, defendant argues that the trial court erred in ruling that because it never appealed the assessments, this statute precluded it from challenging the validity of the

* Circuit judge, sitting on the Court of Appeals by assignment.

assessments as a defense in this case. This Court's review of a decision regarding a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

In support of its position, defendant relies on *Dep't of Treasury v Sperandeo*, 112 Mich App 337; 315 NW2d 863 (1981). In that case, the department issued assessments for unpaid withholding taxes to corporate officers, and after the officers failed to take any action to contest the assessments the department brought suit to collect. *Id.* at 338-339. On appeal, the department argued, in pertinent part, that the officers were precluded from contesting the assessments under the doctrine of exhaustion of administrative remedies. *Id.* at 342. This Court disagreed, stating that the doctrine is not applicable to the defense of an action. *Id.*

While *Sperandeo* is factually on point, it was decided under statutes that have since been repealed and when it was issued, MCL 205.22 as it presently reads was not yet in effect. MCL 205.22 unambiguously states that an uncontested assessment is not reviewable by method of direct or collateral attack. In light of the statute, the trial court correctly concluded that defendant waived its right to challenge the validity of the assessments when it failed to appeal them. See *Curis Big Boy, Inc v Dep't of Treasury*, 206 Mich App 139; 520 NW2d 369 (1994).

Defendant also contends that the trial court erred in finding that the State of Michigan has jurisdiction to impose a use tax on property that is not used, stored or consumed in the state. The trial court made no such finding, however. It merely held that MCL 205.22 precluded defendant from collaterally attacking the assessments. Defendant had an opportunity to contest the validity of the assessments but failed to exercise its right to appeal.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

/s/ Chad C. Schmucker